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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,747	01/23/2002	Lixiao Wang	S63.2-10062	7360

490 7590 02/14/2005

VIDAS, ARRETT & STEINKRAUS, P.A.
6109 BLUE CIRCLE DRIVE
SUITE 2000
MINNETONKA, MN 55343-9185

EXAMINER

RAYFORD, SANDRA M

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 02/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,747

Applicant(s)

WANG ET AL.

Examiner

Sandra M. Nolan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-27 and 29-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-27 and 29-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claims

1. Claims 17-27 and 29-36 are pending.

Withdrawal of Rejection

2. The 35 USC 112 rejection of claims 17-27 and 29-36, recited in section 6 of the 21 December 2004 office action ("the last office action"), is withdrawn in view of the amendments and arguments in the 10 January 2005 response ("the last response").

The examiner notes that the first line of applicants' last response refers to "the Advisory Action dated November 22, 2004". In fact the action just before that response was the non-final office action mailed on 21 December 2004.

New Rejection

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 17-27 and 29-36 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of

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copending Application No. 09/672,330 ("the '330 application") in view of Akkapeddi et al (US 4,857,603). The '330 application shares an inventor, Nao Lee, with this application.

This is a provisional obviousness-type double patenting rejection.

The claims of the '330 application cover processes of making balloons by stretching an extruded tube to make a stretched parison and blowing the balloon from the stretched parison at a temperature above its glass transition temperature. The last four lines of claim 1 cover a process in which a tube is stretched and a portion thereof is expanded to a diameter that is greater than that of the tube. Such a process is conventional when making balloons used as "medical device balloons" and "medical devices", such as those of applicants' claims 17 and 29.

The '330 tube is made of "a polymer selected from the group consisting of . . . polyesters (line 2 of claim 2) and poly(meth)acrylates (line 3 of claim 2). The examiner interprets claim 2 to mean that the polymer material used may be a blend of any of the polymers recited therein, such as the blends of applicants' claim 20.

The '330 application does not claim the use of chain extenders.

Akkapeddi teaches chain extended polyesters made by reacting bislactams with polyesters (abstract). The polyesters are hydroxy-functional (col. 3, lines 39-51) and melt between 250 and 275 degrees C. The polyester and the chain extender are reacted in an extruder (col. 5, lines 32-40). The chain-extended resins are used to make extruded tubing (col. 6, lines 3-6). The chain-extended resins have excellent physical properties (col. 2, lines 40-41).

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The '330 application and Akkapeddi are analogous because both deal with polyesters that are extruded to make tubes.

It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the chain extenders of Akkapeddi in the processes of the '330 application in order to enhance the physical properties of the balloons.

The motivation to employ the chain extenders of Akkapeddi in the balloon-making processes of the '330 application is found at col. 2, lines 40-41 of Akkapeddi, where the excellent physical properties of its chain-extended resins are taught.

It is deemed desirable to make medical devices and medical device balloons that are strong so that they can be used safely for medical treatment.

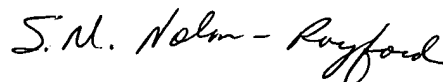
Response to Arguments

5. Applicant's arguments with respect to claims 17-27 and 29-36 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication should be addressed to Sandra M. Nolan-Rayford, at telephone number 571/272-1495. She can be reached Monday through Thursday, from 6:30 am to 4:00 pm, ET. If attempts to reach the examiner are unsuccessful, contact her supervisor, Harold Pyon, at 571/272-1498.

The fax number for patent application documents is 703/872-9306.



S. M. Nolan-Rayford
Primary Examiner
Technology Center 1700

10055747(20050211)